

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5796 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL  
and

MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? No

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2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?  
No

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POBARI SHANTILAL MOHANLAL

Versus

STATE OF GUJARAT

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Appearance:

MR ANSHIN H DESAI for Petitioner

MR HL JANI, AGP for Respondents No. 1, 2

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CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

Date of decision: 03/03/99

ORAL JUDGEMENT

(Per : Panchal, J.)

Rule. Mr. H.L.Jani, learned A.G.P. waives  
service of notice of rule on behalf of the respondents.

At the joint request of the learned advocates appearing for the parties, the petition is taken-up for final hearing today.

2. By means of filing this petition under Article 226 of the Constitution, the petitioner has prayed to issue a writ of certiorari or any other appropriate writ, order or direction to quash and set aside order dated October 22, 1997 by which application dated February 22, 1995 made by the petitioner requiring Special Land Acquisition Officer, Junagadh to refer the matter to the Court for determination of compensation is rejected on the ground that it is time barred. The petitioner has further prayed to issue a writ of mandamus or any other appropriate writ or order directing respondent no.2 to make reference to the Court as prayed for in the application dated February 22, 1995 for the purpose of determination of compensation.

3. The petitioner is owner and occupier of land bearing Survey No. 132 of village Mendarada, Taluka : Mendarada, District : Junagadh. Out of the said survey number, land admeasuring 20 Are & 54 sq.mts. was acquired by the State Government for public purpose of 'Mendarada - Visavadar Road' pursuant to publication of notification on November 29, 1990, which was issued under section 4(1) of the Land Acquisition Act, 1894 ("the Act" for short). The petitioner has averred in the petition that he was served with notice under section 9 of the Act for determination of compensation. After taking into consideration the materials placed before him, Special Land Acquisition Officer made award under section 11(1) of the Act on February 19, 1994, copy of which is produced by the petitioner at Annexure-B to the petition. The petitioner has claimed in the petition that he was not aware about making of award and, therefore, he could not remain present before Special Land Acquisition Officer on the date on which the award was made. It is stated in the petition that the petitioner came to know about the award having been made by the Special Land Acquisition Officer on May 11, 1994 in respect of Survey No.132 only when notice under section 12(2) of the Act was served on him in respect of Survey No. 133/1 which was also acquired for the same public purpose and which was numbered as Land Acquisition Case No.16/93. A copy of notice received by the petitioner under section 12(2) of the Act in respect of Survey No. 133/1 is produced by the petitioner at Annexure-C to the petition. The petitioner was of the view that compensation offered by the Special Land Acquisition Officer in respect of Survey No. 132 was inadequate. Therefore, he made application

dated February 22, 1995 requiring the Land Acquisition Officer to refer the matter to the Court for determination of compensation. That application is rejected by respondent no.2 vide order dated October 22, 1997 on the ground that it is time-barred. The order passed by respondent no.2 on October 22, 1997 is produced at Annexure-A to the petition. The petitioner has claimed in the petition that he was never served with notice as contemplated by section 12(2) of the Act in respect of land bearing Survey No. 132 of village Mendarada and, therefore, the application submitted by him could not have been rejected on the ground that it is time-barred. Under the circumstances, the petitioner has filed present petition and claimed reliefs to which reference is made earlier.

4. The petition was placed before Court for admission hearing on December 14, 1998 and after hearing learned Counsel for the petitioner, notice was ordered to be issued to the respondents making it returnable on December 22, 1998. Though the respondents are duly served, no affidavit-in-reply has been filed by any of the respondents controverting the averments made in the petition.

5. Heard the learned Counsel for the parties. It is duty of the District Court to which reference will be made under section 18 to decide as to whether the application submitted by the petitioner requiring Special Land Acquisition Officer to refer the matter to the Court for determination of compensation is time-barred or not. If the Court comes to the conclusion that the application is time-barred, reference is bound to fail, but the Special Land Acquisition Officer could not have rejected the application requiring him to refer the matter to the Court for determination of compensation on the ground that it was time-barred. Under the circumstances, we are of the opinion that appropriate direction deserves to be given to respondent no.2 to refer the application submitted by the petitioner to the concerned Court for determination of compensation.

For the foregoing reasons, the petition succeeds. Order dated October 22, 1997, produced at Annexure-A to the petition is hereby set aside and quashed. Respondent no.2 is hereby directed to refer the application dated February 22, 1995 made by the petitioner under section 18 of the Act to the concerned Court as early as possible and preferably within two months from today. It is made clear that it will be open to the Special Land Acquisition Officer to contend before the concerned Court

that the reference is time-barred and should be rejected.  
If such a plea is raised, the same shall be decided by the  
concerned Court on merits and in accordance with law,  
without being influenced in any manner by present order.  
Rule is made absolute, with no order as to costs.

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(patel)